

ESTATE OF SAM MCGEE
AND
ALICE JO MCGEE-WARD-PRITCHARD

IBLA 89-153

Decided May 19, 1989

Appeal from a decision of the Alaska State Office, Bureau of Land Management, finding land proper for selection by the State of Alaska. F-024504.

Decision affirmed; complaint dismissed.

1. Alaska: Homesteads--Alaska: Statehood Act--Res Judicata--State Selections

The Board will affirm a BLM decision finding land proper for selection by the State of Alaska in the face of an appeal challenging that decision on the basis that the appellants have a superior interest in the land by virtue of a prior homestead entry where final proof submitted in support of that entry was rejected by BLM with administrative finality and appellants have not demonstrated that the rejection was erroneous.

APPEARANCES: Terri-Lynn Coleman, Esq., and Barry W. Jackson, Esq., Fairbanks, Alaska, for appellants; Cameron M. Leonard, Esq., Office of the Attorney General, State of Alaska, for the State of Alaska.

OPINION BY ADMINISTRATIVE JUDGE KELLY

On December 6, 1988, the Estate of Sam McGee and Alice Jo McGee-Ward-Pritchard, acting as heir and personal representative of the estate (hereinafter appellants), filed a notice of appeal from an October 28, 1988, decision of the Alaska State Office, Bureau of Land Management (BLM), which found certain land, including the NE¹/₄ sec. 25, T. 1 N., R. 2 E., Fairbanks Meridian, Alaska, but excluding the land encompassed by right-of-way F-024538, "proper for selection" by the State of Alaska pursuant to State selection application F-024504. 1/ BLM further stated in its October

1/ In their notice of appeal, appellants incorrectly list Jody Reed, a BLM employee, as the heir and personal representative of the estate. This obvious error was corrected in a Dec. 15, 1988, letter to the Board from counsel for appellants, substituting Alice Jo McGee-Ward-Pritchard.

1988 decision that the State selection application "[would] be tentatively approved at a later date."

BLM's decision concerns what it describes as "the only selected lands remaining" in the township, that is, the only lands on which an unresolved State selection application remained pending, to wit: the NE[^] NW[^] and SE[^] SE[^] sec. 24, and the NE[^] NE[^] sec. 25. The latter parcel is at issue here, as appellants claim an interest in it.

State selection application F-024504, as originally filed on November 30, 1959, pursuant to section 6(b) of the Act of July 7, 1958, as amended (the Alaska Statehood Act), 72 Stat. 340 (1958), listed some of the lands within the township, but did not include the NE[^] NE[^] of sec. 25. In its October 1988 decision, BLM explained the omission of these lands from the original application by noting that, when the State filed its selection application, parts of the township were unavailable for selection because they were covered by claims of record. Although BLM's decision does not so specify, the record shows that, in November 1959, the NE[^] NE[^] of sec. 25 was subject to a prior homestead entry by one Bruce Beaton (F-016435). Subsequently, on April 29, 1964, and again on June 16, 1972, the State amended application F-024504 to encompass all of the lands in the township. 2/

In their notice of appeal, appellants assert that they, on behalf of McGee, claim a greater interest than that of the State of Alaska in the NE[^] NE[^] of sec. 25. The notice of appeal contains no statement of reasons for the appeal, but states that appellants reserve the right, pursuant to 43 CFR 4.412(a), "to file the statement of reasons or additional statements of reasons and briefs within 30 days after the notice of appeal [is filed]." No formal statement of reasons was ever filed.

Along with the notice of appeal, counsel for appellants filed a private contest complaint against the State of Alaska, again opposing the October 1988 BLM decision finding the NE[^] NE[^] sec. 25 proper for selection by the State. 3/ In that complaint, contestant again asserts that she, through her predecessor, McGee, claims a "higher, greater, and prior interest to that of the State of Alaska" in the NE[^] NE[^] of sec. 25 (Complaint at 3). She also contends that BLM should cancel tentative approval of transfer of the land to the State and that the State's interest in the land should be invalidated, because McGee and his heirs were "prevented from exercising rights under the homestead law" by "mistakes made by [BLM] prior to selection of

2/ On June 16, 1972, the State also amended another selection application (F-028735) for all lands in this township. On Feb. 17, 1983, BLM rejected this duplicative application "for administrative convenience," electing to consider the earlier application for the same lands (F-024504).

3/ The contest complaint does not list the appellants as the contestants. Rather, the complaint incorrectly lists "Jody Reed" alone as the contestant. This was obviously an error (see note 1, supra). In view of the December 1988 letter from appellants' counsel, we will henceforth regard the complaint as filed in the name of Alice Jo McGee-Ward-Pritchard (hereinafter contestant).

this land by the State of Alaska, the action of the State of Alaska in selecting the land in question in multiple selections, and the State's later inaction toward obtaining patent to the land." Id. at 4. Attached to the contest complaint are various documents which, contestant states, further set forth the factual background of the case and the legal premises of the complaint. These documents indicate that Sam McGee originally filed homestead entry application F-020495 with BLM on August 4, 1958, seeking 30 acres of land in the NE¹ sec. 25, T. 1 N., R. 2 E., Fairbanks Meridian, Alaska, but not including the NE¹ NE¹. However, this 30 acres was already included in the prior homestead entry application (F-016435), which had been filed by Bruce Beaton on October 29, 1957. That entry had been allowed by BLM on April 30, 1958.

BLM also apparently inadvertently allowed McGee's entry, but, by decision dated November 2, 1960, cancelled it. McGee appealed that decision and, in addition, filed a private contest complaint challenging Beaton's entry. The Department finally affirmed cancellation of McGee's homestead entry by decision dated July 17, 1962 (Sam Fathol McGee, A-29031). No further action was taken by McGee to challenge this decision and the case was closed by BLM on October 1, 1962.

On August 10, 1962, prior to disposition of McGee's private contest against Beaton, Beaton relinquished his entry. Thereafter, by decision dated September 21, 1962, BLM dismissed the contest complaint. No appeal was taken from this decision. However, throughout this time period, McGee and his family had continued to reside on and farm the 30 acres of land outside the NE¹ NE¹.

On September 20, 1962, following cancellation of his prior entry and relinquishment of Beaton's entry, McGee filed homestead entry application F-030435 with BLM, seeking 150 acres of land in the NE¹ sec. 25, T. 1 N., R. 2 E., Fairbanks Meridian, Alaska. This application included the NE¹ NE¹ of sec. 25. BLM notified McGee that his entry was allowed by letter dated February 20, 1963, and McGee thereafter began clearing and cultivating 120 acres of the land, having previously cleared and cultivated the remaining 30-acre portion of the land under his prior homestead entry.

As noted supra, the State amended selection application F-024504 on April 29, 1964, to encompass all of T. 1 N., R. 2 E., Fairbanks Meridian, Alaska, including all of sec. 25. On September 3, 1964, BLM conveyed a portion of the land in the NE¹ sec. 25, not including the NE¹ NE¹, to the State pursuant to patent No. 50-65-0168.

McGee subsequently filed his final proof with respect to homestead entry F-030435 on February 19, 1968. BLM advised McGee that his final proof was defective on its face by letter dated March 12, 1968, which letter was received by McGee on March 20, 1968. McGee then requested a 30-day extension of time to file a request for a reduction in the cultivation requirements on April 4, 1968.

Thereafter, stating that McGee had failed to submit a request for a reduction despite having received two extensions of time to file such a

request, BLM rejected McGee's final proof by decision dated May 17, 1968. As a basis for its rejection, BLM stated that McGee had not cultivated at all in the second entry year and had cultivated less than was required in the third and fourth entry years. A copy of the decision was received by McGee on June 18, 1968. However, no appeal was filed and the case was closed by BLM on August 14, 1968.

McGee and his family thereafter continued to reside on and farm the 150 acres of land, but took no other immediate action to legitimize that occupancy. McGee died intestate on August 14, 1976.

By decision dated March 31, 1983, BLM tentatively approved another portion of the land in the NE¹ of sec. 25, not including the NE¹ NE¹, for conveyance to the State pursuant to State selection application F-024504. The land was then conveyed to the State by patent No. 50-83-0212 on June 21, 1983. Together with the September 1964 patent, this resulted in conveyance of all of the land in the NE¹ sec. 25, with the exception of the NE¹ NE¹, to the State pursuant to State selection application F-024504.

Upon receipt of the notice of appeal and private contest complaint, BLM responded to counsel for appellants by letter dated December 14, 1988. In that letter, BLM acknowledged receipt of the appeal and complaint, but correctly stated that, while it regarded the complaint as satisfying the requirements of 43 CFR 4.450-4, it could not give formal notice of the acceptance of the contest filing where the appeal had removed BLM's jurisdiction to take any action with respect to the complaint. See James C. Mackey, 96 IBLA 356, 362, 94 I.D. 132, 136 (1987); State of Alaska v. Patterson, 46 IBLA 56, 59 (1980). Thus, BLM stated that it was forwarding the case to the Board for appropriate action. The case was received by the Board on December 23, 1988.

On January 3, 1989, the State filed an answer to the private contest complaint, generally denying the contestant's claim that she has a higher, greater, and prior interest in the NE¹ NE¹ sec. 25. Subsequently, on January 4, 1989, the State filed a motion to dismiss the private contest complaint, asserting three bases for that request. First, the State argues that the contestant is barred from pursuing the private contest under the doctrine of the "election of remedies" where she had already appealed the October 1988 BLM decision. Second, the State argues that the complaint is subject to summary dismissal where it does not comply with 43 CFR 4.450-4(a)(5) and (c). Third, the State argues that the doctrine of administrative finality precludes any consideration of the complaint where BLM has already finally adjudicated McGee's homestead entry.

Finally, on January 27, 1989, the State filed a motion to dismiss appellants' appeal of the October 1988 BLM decision because appellants had failed to file a statement of reasons for their appeal, as required by 43 CFR 4.412(a).

We will deal first with the question of whether appellants failed to file a statement of reasons for their appeal. Departmental regulation 43 CFR 4.412(a) requires an appellant to file a statement of reasons "within

30 days after the notice of appeal was filed" where that notice did not contain a statement of reasons. We conclude that the contest complaint, along with the attached documents, was sufficient to constitute a statement of the reasons for appellants' appeal. Whatever the relative merits of the reasons offered, appellants essentially contend that they have a superior right to the land approved for conveyance to the State where McGee's homestead entry had predated the State selection and BLM had erroneously adjudicated that entry. Those reasons are sufficient to constitute a statement of reasons and thus cause the appeal to survive a motion to dismiss for failure to file such a statement.

[1] However, after careful consideration, we conclude that the Board's reconsideration of the question of McGee's entitlement, and thus the entitlement of any heirs or successors in interest, under the homestead laws with respect to homestead entry application F-030435 is barred by the doctrine of administrative finality. Under the well-established doctrine of administrative finality, the Board will not reconsider a previous Departmental decision which has become final for the Department either because no appeal was taken from the decision or because any appeal taken resulted in affirmance of the decision, except where jurisdiction over the land remains in the United States and reconsideration is necessary in order to correct or reverse an erroneous decision because of compelling legal or equitable reasons. United States v. Vernard E. Jones, 106 IBLA 230, 246-47, 95 I.D. 314, 322-23 (1988); Turner Brothers Inc., 102 IBLA 111, 121 (1988); Village of South Naknek, 85 IBLA 74 (1985). Here McGee's entry was finally adjudicated by BLM in 1968, and appellants have presented insufficient reasons to justify reopening the question of that entitlement.

The May 1968 BLM decision rejecting the final proof submitted in connection with homestead entry application F-030435 clearly became final for the Department in the absence of an appeal from that decision. The entry ceased to exist at that time. In these circumstances, the appeal, in conjunction with the complaint, must be held to have failed to establish such a superior interest in the NE¹ NE¹ sec. 25 which would preclude BLM from finding the land proper for selection by the State. Thus, the October 1988 BLM decision must be affirmed.

With respect to the contestant's private contest complaint against the State, the complaint was improperly filed with the Board because BLM has not yet taken any action, adverse or otherwise, on the complaint. See 43 CFR 4.410(a). Normally, the case file would be returned to BLM for appropriate action with respect to the private contest complaint. However, since the complaint is also based on BLM's October 1988 decision, we conclude that, in the interest of judicial economy, the complaint should be dismissed. 4/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the October 1988

4/ The State of Alaska's motion to dismiss the complaint on the grounds that it is barred by administrative finality is hereby granted.

BLM decision is affirmed, and appellants' private contest complaint is dismissed.

John H. Kelly
Administrative Judge

I concur:

David L. Hughes
Administrative Judge